

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MEMORANDUM AND ORDER

YANDLE, District Judge:

Before the Court is Defendant United States of America's motion to dismiss for lack of prosecution (Doc. 20). Andre Green filed this action pursuant to the Federal Tort Claims Act seeking damages for injuries he sustained while confined at USP-Marion (Count 1). Count 2 has been dismissed. Another case regarding Green's injury was filed and dismissed at Green's request. *Green v. Duncan*, 13-cv-713-JPG-PMF (S.D. Ill. Sept. 12, 2014).

Defendant seeks dismissal for lack of prosecution, asserting that Green failed to provide full responses to discovery, failed to comply with a discovery order, failed to respond to written correspondence, failed to attend a properly noticed deposition, and failed to reschedule the deposition or reimburse expenses. Defense counsel recently attempted to contact Green through certified mail, which could not be delivered by the U. S. Postal Service. A response to the motion to dismiss was due by November 5, 2015. A response is not on file. The absence of a response permits an inference that the motion to dismiss has merit.

Dismissal for want of prosecution is an extraordinarily harsh sanction that should be used only when there is a clear record of delay or contumacious conduct or less drastic sanctions have

been unavailing. *Gabriel v. Hamlin*, 514 F.3d 734, 736 (7th Cir. 2008). The Court has evaluated all circumstances, including the frequency of any failure to comply with Orders and deadlines, responsibility for mistakes, effect on the judicial calendar, prejudice caused to the defense, merit of the underlying claim, and any social objectives represented by the suit. *Aura Lamp & Lighting Inc. v. International Trading Corp.*, 325 F.3d 903, 908 (7th Cir. 2003). There is a clear record of delay and contumacious conduct. Green ignored a Court order (Doc. 19) and either refused to accept certified mail or moved without providing a new address. The circumstances support dismissal at this time. Accordingly, Defendant's motion (Doc. 20) is **GRANTED**. Count 1 is **DISMISSED** for lack of prosecution. The Clerk shall enter judgment and close this case.

If any party wishes to appeal, a notice of appeal must be filed within 30 days after entry of judgment. If any party wishes to ask the undersigned to alter or amend the judgment, that motion is due within 28 days, and there is an exception from the general rule for extending time. Please consult Fed. R. Civ. P. 59, 6; Fed. R. App. P. 4, 12.

IT IS SO ORDERED.

DATED: November 12, 2015

s/ Staci M. Yandle
STACI M. YANDLE
United States District Judge